



# Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

NUMBER: 280.04.193/194

CONVERSION DATE: July 1, 1998

**This ETA is cancelled effective January 30, 2006.**

## COMMISSIONS EARNED ON INTERSTATE SALES

Issued September 30, 1966

Where sales are exempt from tax because of their interstate nature, are the commissions earned by a resident agent on the sales subject to Business Tax?

The taxpayer was a resident agent of an out-of-state manufacturer. The taxpayer's domicile and place of business were in Washington. The taxpayer solicited orders in other states but did not have a business situs in those states. The taxpayer contended that the commissions earned by him were not taxable because of the interstate nature of the sales on which the commissions were earned. The taxpayer also contended that, if any of the commissions were taxable, only those derived from sales in Washington were subject to tax.

Rule 193 provides that compensation received from business activities only incidentally related to interstate commerce is taxable income. The rule further provides that compensation received by merchandise brokers or commission merchants for services rendered within this state to principals engaged in interstate or foreign commerce is also taxable income. The Commission held that the commissions received by the taxpayer for negotiating the sales were only incidentally related to interstate commerce.

RCW 82.04.460 provides that

"Any person rendering services and maintaining places of business both within and without this state shall, for the purpose of computing tax liability under this chapter, apportion to this state that portion of his gross income which is derived from services rendered within this state . . . ."

The Commission held that, as the taxpayer did not maintain a place of business "without this state", no grounds existed for apportionment of the taxpayer's gross income from commissions. No other state could tax the commissions earned on sales negotiated by the taxpayer outside Washington because the taxpayer had no place of

***ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.***

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business in any of those states. Therefore, the Service classification of the Business Tax was held applicable to the entire gross income from commissions earned by the taxpayer. (Order.)